**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

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**O R D E R**

**NAVAL SINGH JHALA VS. STATE OF RAJ. & ORS. .**

**S.B. CIVIL WRIT PETITION NO.1910/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.**

**DATE OF ORDER : 5.7.2006**

**PRESENT**

**HON'BLE MR.MOHAMMAD RAFIQ,J.**

Mr.Rajendra Singh Shekhawat, for the petitioner.
Ms. Kusum Rao, for the respondent no.4
Mr. Rameshwar Dave, Dy.GA, for the respondent-State.

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**BY THE COURT**: -

In the present writ petition, it has been stated that the persons eligible for appointment on the post of Shiksha Sahayogi were required to apply to the Block Development Officer from 6th to 8th May, 2002. All the applications, thereafter, were required to be forwarded to the District Education Officer upto 10th May, 2002 and who in turn was required to forward them to Gram Sabha, which would have considered and select the candidates on merit on 20th May, 2002. According to the petitioner, the last

date for submission of application forms was 16th May, 2002, scrutiny was to be made on 18th May, 2002 and selection by the Gram Sabha was to be made on 20th May, 2002 strictly on the basis of merit.

Learned counsel for the petitioner Shri Rajendra Singh Shekhawat argued that the respondents have illegally and arbitrarily accepted the form of respondent no.5 Keshulal Meghwal on 20th May, 2002 itself. An objection to this effect was raised in the Gram Sabha. It is submitted that the petitioner was amongst the first five applicant, who had submitted their application forms in time and the petitioner being most meritorious ought to have been appointed. He therefore, prays that the respondents be directed to consider the candidature of the petitioner for the post of Shiksha Sahayogi on merit as obtaining on 20th May, 2002 before the selection committee for the post and also treat the respondent no.5 as disqualified for the selection process held on 20.5.2002.

On the other hand, learned Dy. Government Advocate Shri Rameshwar Dave appearing for the respondent-State and Ms. Kusum Rao appearing for the respondent no.4 have opposed the writ petition. The respondents have filed reply to the writ petition in which they raised certain preliminary objections. It has been stated that the State Government has issued guidelines in regard to appointment of para teachers vide notice dated

30.4.2001. According to these guidelines, the selection of para teacher was to be made by the same community to which the Sarpanch is belonging. In the present case, the Sarpanch of the Gram Panchayat Amiwada belongs to SC class, accordingly, the candidate belonging to SC was to be selected on the post of Shiksha Sahayogi. In the said guidelines, it has been provided that if the candidate of the category of Sarpanch is not available then this post was to be offered for appointment to other category, like ST, OBC and lastly to General category. When the candidate from SC category was not available, the respondent no.5, who was ST, was rightly appointed. The petitioner being a candidate from general class was not eligible for appointment. As regards, the argument of the learned counsel for the petitioner that the application form of the respondent no.5 was not submitted timely, it has been explained in the reply to the writ petition that in fact, six forms were received on 16.5.2002 including the form of respondent no.5, but only five application forms were sent to Gram Panchayat Amiwada on 18th May, 2002. The application form of the respondent no.5 was sent to the Gram Panchayat, Newach and when this mistake was discovered, the same was rectified and the application form of the respondent no.5 was placed before the selection committee of Panchayat Samiti, Jhadol and finally selection was made. It was not a mistake on the part of the respondent no.5. Therefore, it

is argued that no undue favour was shown to the respondent no.5 in the matter of selection on the post of Shiksha Sahayogi.

I have considered the arguments advanced by learned counsel for the parties and perused the record.

From a perusal of Annex.R/1, which is the order/guidelines issued by the State Government, it would be clear that selection of the para teacher was to be made from the same category to which the Sarpanch of the Gram Panchayat concerned belonged. In case, eligible candidate from that category was not available, the post was to be offered on priority basis to the candidate belonging to SC, ST, OBC and general, in that order. In the present case, admittedly, the petitioner does not belong to any of the first three category. He is a candidate of general category and, therefore, he cannot have a preferential claim over the candidate belonging to first three categories. The respondent no.5 belongs to ST category and hence, peference was given to him. Therefore, no fault can be found with the action of the respondents. On the question of delayed receipt of his application form, I am satisfied that the explanation given by the respondents is just and proper. His application form was sent to Gram Panchayat Newach instead of being sent to Gram Panchayat Amiwada and on discovery of this fact, it was ultimately placed before the Selection Committee of the Gram Panchayat Jhadol and was considered alongwith other five forms

in the same proceedings. The respondent no.5 could not be non-suited on that count. Even otherwise, this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India would not like to examine such disputed questions of fact.

In view of the above discussions, I do not find it to be a fit case for interference under Article 226 of the Constitution of India. Hence, the writ petition is hereby dismissed.

No order as to costs.

**(MOHAMMAD RAFIQ), J**.

c.p.goyal/-